

Federal Communications Commission

DA 04-3336

Oct 26 1 50 PM '04

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.

(Cordele, Dawson, and Pinehurst, Georgia)

MM Docket No. 04-33
RM-10847

REPORT AND ORDER
(Proceeding Terminated)

Adopted: October 20, 2004

Released: October 25, 2004

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it the *Notice of Proposed Rule Making* ("Notice")¹ issued in response to a petition for rule making filed by Staton Broadcasting, Inc. ("Petitioner"), permittee of Station WMRZ(FM) ("WMRZ"), Dawson, Georgia, and licensee of Station WQXZ(FM) ("WQXZ"), Cordele, Georgia.² Clyde Scott Jr., dba EME Communications, filed a Counterproposal. Petitioner filed comments. For the reasons stated below, we grant Petitioner's rulemaking petition.

2. At the request of Petitioner, the *Notice* proposed that Channel 251A, Station WMRZ, be upgraded to Channel 251C3. Petitioner requested this channel upgrade pursuant to Section 1.420(g)(3) of the Commission's rules.³ Since this upgrade would be short spaced to Channel 252A, Station WQXZ at Cordele, Georgia, the *Notice* proposed to reallocate Channel 252A from Cordele to Pinehurst, Georgia, which would provide Pinehurst with its first local aural transmission service. Petitioner made the foregoing reallocation request pursuant to Section 1.420(i) of the Commission's rules,⁴ which permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest.⁵ In considering a reallocation proposal, we compare the existing allotment to the proposed allotment to determine whether the reallocation will result in a preferential arrangement of allotments. This determination is based upon the

¹ *Cordele, Dawson, and Pinehurst, Georgia*, 19 FCC Rcd 3454 (MB 2004).

² The original petition for rule making in this proceeding was filed by West Com Corp., the former permittee of Station WMRZ, and Metro Com Corp, the former licensee of Station WQXZ. Petitioner is the successor in interest to West Com Corp and Metro Com Corp. Petitioner filed timely comments in this proceeding, stating that if the proposals in this rulemaking are approved, Petitioner will file applications to implement those proposals.

³ 47 C.F.R. § 1.420(g)(3).

⁴ 47 C.F.R. § 1.420(i).

⁵ See *Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990).

FM allotment priorities.⁶

3. The Counterproposal filed by EME Communications requests the allotment of Channel 252A to Coolidge, Georgia. Since the Counterproposal is not mutually exclusive with the *Notice's* proposal, the Counterproposal does not constitute a true counterproposal.⁷ Moreover, because the Counterproposal conflicts with Station WQXZ's existing license at Cordele, Georgia, it is contingent on Channel 252A being removed from Cordele, Georgia. We continue to believe that it would not be conducive to the efficient transaction of allotment proceedings to accept contingent proposals into a proceeding which could not be granted unless a separate rulemaking proposal is granted.⁸ In this light, we dismiss EME Communications' Counterproposal as unacceptable for consideration.

4. We find that the public interest would be served by upgrading Channel 251A, Station WMRZ, Dawson, Georgia, to Channel 251C3, because it will provide new service to 110,260 persons in an area of 2,513 square kilometers, while the loss area will include only 947 persons in an area of 227 square kilometers. Both the gain and loss areas are well served by five or more radio broadcast stations. We also find that reallocating Channel 252A, Station WQXZ, from Cordele, Georgia to Pinehurst, Georgia would result in a preferential arrangement of allotments under the FM allotment priorities because Pinehurst would receive its first local aural transmission service. Pinehurst is an incorporated community with a 2000 U.S. Census population of 307 persons. Thus, under the FM allotment priorities, retaining the allotment of Channel 252A at Cordele only satisfies priority (4) (other public interest matters), while the reallocation of Channel 252A to Pinehurst will satisfy priority (3) (first local service). We also observe that the reallocation of Channel 252A to Pinehurst would not deprive Cordele of its sole local aural transmission outlet because Cordele would continue to be served by FM Station WAEF. Therefore, in accordance with the provisions of Section 1.420 (i) of the Commission's rules,⁹ we will modify the license of Station WQXZ to specify operation on Channel 252A at Pinehurst, Georgia.

5. Consistent with the technical requirements of the Commission's rules, Channel 251C3 can be allotted to Dawson, Georgia, utilizing coordinates of 31-37-25 NL and 84-19-49 WL, with a site restriction of 20 kilometers (12.4 miles) southeast of Dawson. Channel 252A can be allotted to Pinehurst, Georgia, in conformity with the technical requirements of the Commission's rules, utilizing coordinates of 32-10-03 NL and 83-37-51 WL, with a site restriction of 12.9 kilometers (8.0 miles) east of Pinehurst.

6. This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not

⁶ See *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982). The allotment priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service and (4) other public interest matters. Equal weight is given to priorities (2) and (3).

⁷ See *Implementation of BC Docket 89-90 to Increase the Availability of FM Broadcast Assignments*, 5 FCC Rcd 931, fn. 5 (1990).

⁸ See *Ironton, Missouri, et al.*, 13 FCC Rcd 6584 (MMB 1998) and *Hart, Michigan et al.*, 19 FCC Rcd 16999 (MB 2004).

⁹ 47 C.F.R. § 1.420(i).

contain any new or modified "information collection burden for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4). The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the General Accounting Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

7. Accordingly, pursuant to the authority contained in 47 U.S.C. Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) and 47 C.F.R. Sections 0.61, 0.204(b) and 0.283, IT IS ORDERED, That effective December 10, 2004, the FM Table of Allotments, 47 C.F.R. Section 73.202(b), IS AMENDED for the communities listed below, as follows:

<u>Community</u>	<u>Channel Number</u>
Dawson, Georgia	251C3
Cordele, Georgia	-----
Pinehurst, Georgia	252A

8. IT IS FURTHER ORDERED, that the petition for rule making filed by Staton Broadcasting, Inc. IS GRANTED.

9. IT IS FURTHER ORDERED that the Counterproposal filed by Clyde Scott Jr., D.B.A. EME Communications IS DISMISSED.

10. IT IS FURTHER ORDERED, That pursuant to 47 U.S.C. Section 316(a), the construction permit of Staton Broadcasting, Inc., for Station WMRZ(FM), Dawson, Georgia, IS MODIFIED to specify operation on Channel 251C3, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the permittee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with 47 C.F.R. Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to 47 C.F.R. Section 1.1307, unless the proposed facilities are categorically excluded from environmental processing.

11.. IT IS FURTHER ORDERED, That pursuant to 47 U.S.C. Section 316(a), the license of Staton Broadcasting, Inc., for Station WQXZ(FM), Cordele, Georgia, IS MODIFIED to specify operation on Channel 252A at Pinehurst, Georgia, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with 47 C.F.R. Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to 47 C.F.R. Section 1.1307, unless the proposed facilities are categorically excluded from environmental processing.

12. Pursuant to 47 C.F.R. Sections 1.1104(1)(k) and (3)(l), any party seeking a change of community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, Staton Broadcasting, Inc., permittee of Station WMRZ(FM) and licensee of Station WQXZ(FM), is required to submit a rule making fee in addition to the fee required for the application to effectuate the upgrade in channel for Station WMRZ(FM) and the application to effectuate the change in community of license for Station WQXZ(FM), Channel 252A, Cordele, Georgia, to Channel 252A, Pinehurst, Georgia, at the time its Form 301 applications are submitted.

13. IT IS FURTHER ORDERED that this proceeding IS TERMINATED.

14. For further information concerning the above, contact R. Barthen Gorman, Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

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